

**FAMILY AND MEDICAL LEAVE ACT**

Consistent with the federal Family and Medical Leave Act of 1993, the Board of Education recognizes the right of eligible employees to unpaid family and medical leave for up to twelve (12) weeks during a twelve (12) month period. In the event both spouses are employed by the school district, the aggregate number of work weeks of leave to which both may be entitled are limited to twelve (12) work weeks during any twelve (12) month periods if the leave is taken for birth or adoption of a child or the care for a sick parent. The Board shall ensure that all eligible employees who use such leave shall have their health benefits continued as required by said Act and shall be returned to an equivalent position according to established Board practices, policies and collective bargaining agreements.

To be eligible for family or medical leave, an employee must have been employed for at least twelve (12) months and have worked at least 1,250 hours during the prior twelve (12) months.

Family leave shall be provided when a son or daughter is born to the employee or one is placed with the employee for adoption or foster care. Medical leave shall be provided in order for the employee to take care of a spouse, child, or parent who has a serious health condition or when the employee has a serious health condition rendering him/her unable to perform the functions of the employee's job.

An employee may elect or the District may require an employee to use accrued paid vacation, personal or family leave for purposes of a family leave. An employee may elect or the District may require an employee to use accrued vacation, personal, or medical/sick leave for purposes of a medical leave.

The employee shall notify the District of his/her request for leave, if foreseeable, at least thirty (30) days prior to the date when the leave is to begin. If such leave is not foreseeable, the employee shall give such notice as is practical. The District may require a certification from a health care provider if medical leave is requested. When an employee returns following a leave, he/she must be returned to the same or equivalent position of employment. The Superintendent of Schools, or designee, may reassign a teacher consistent with the teacher's agreement to a different grade level, building or other assignment consistent with the employee's certification and tenure area.

The Board shall ensure that family and medical leave, consistent with the Family and Medical Leave Act, is provided by August 5, 1993, if there is not effective collective bargaining agreement. If there is an effective collective bargaining agreement, the Board will provide leave pursuant to the agreement until it expires or until February 5, 1994, whichever occurs earlier. At that date, the Board shall ensure that family and medical leave is available consistent with the Act.

The District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Approved: June 28, 1994

**FAMILY AND MEDICAL LEAVE ACT REGULATION**

The following regulations shall apply only to leave under the Family and Medical Leave Act of 1993 (FMLA).

**Eligibility**

An employee who has worked for the District for at least twelve (12) months is eligible for twelve (12) weeks of FMLA leave during a twelve-month period provided the employee worked at least 1,250 hours in the twelve months preceding the beginning of the leave.

The twelve-month period will be determined as follows: a rolling twelve-month period measured backward from the date an employee uses any FMLA leave (but not before August 5, 1993).

**Right to Benefits During Leave**

An eligible employee is entitled to a combined total of twelve (12) weeks of unpaid family and medical leave. Any employee who uses unpaid leave shall have his/her health benefits continued during the leave; however, the employee is required to pay his/her share of the premium. If the payment of the employee's share is not paid to the District within thirty (30) days of the due date, the District's obligation to maintain health insurance ceases, and the District may recover the employee's share of the premium payment missed by the employee if the District maintained health coverage by paying the employee's share. The employee is not entitled to accrue seniority during the leave.

An employee may elect, or the District may require, an employee to use available paid leave time for purposes of a family or medical leave. However, an employee may only use accrued medical/sick leave in accordance with an applicable collective bargaining agreement.

**Types of Leave**

Family leave is available when a son or daughter is born to the employee, adopted by an employee or placed with the employee for foster care. Medical leave is available in order for the employee to take care of a spouse, child or parent who has a serious health condition or when the employee has a serious health condition rendering him/her unable to perform the essential functions of the employee's job.

A son or daughter shall include any individual, whether biological, adopted, a foster child, a stepchild, a legal ward, or other child to whom the employee stands *in loco parentis* who is under eighteen (18) years of age, or if over eighteen, is incapable of self-care due to a mental or physical disability. A parent shall include the biological parent of the employee or an individual who stood *in loco parentis* to the employee when he/she was a son/daughter. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Family leave must be taken within one year of the birth or placement of the employee's child. If both spouses are employed by the same school district, the combined amount of leave for birth, adoption, foster care placement and parental illness may be limited to twelve (12) weeks. An employee may not take leave to care for a parent-in-law. This twelve (12) week limitation does not apply to medical leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition, or for his/her own serious illness.

### **Notice to Take Leave**

The employee shall notify the District of his/her request for family or medical leave at least thirty (30) days prior to the date when the leave is to begin, when such leave is foreseeable. If such leave is not foreseeable, then notice shall be given as early as is practical. If the employee requests medical leave, reasonable attempts shall be made to schedule planned medical treatment so as not to disrupt the District's operations.

### **Intermittent and Reduced Leave**

Intermittent leave is leave taken in separate blocks of time due to a single illness or injury. Reduced leave is a leave schedule that reduced the employee's usual number of hours per work week or hours per work day.

An employee who requests leave for birth, adoption, or foster care placement shall not be provided intermittent leave or a reduced leave schedule unless the employee and the District mutually agree. The employee who uses such family leave is not automatically entitled to use such leave on an intermittent or reduced schedule basis.

Intermittent leave may be provided to care for a spouse, child, a parent, or for serious illness of the employee, however, the District may transfer the employee to a comparable position if it will better accommodate such intermittent periods of leave.

- **Instructional Employees:** For instructional employees (i.e., teaching staff) who request medical leave and it is foreseeable that the medical treatment shall cause the employee to be on leave for more than twenty percent (20%) of the total number of working days in the period of leave, the District may require the employee to take leave for the duration of the treatment or to transfer temporarily to an equivalent position for which the employee is qualified, but which better accommodates intermittent periods of leave.

### **Certification**

The District may require the employee requesting medical leave to present a certification from the health care provider of the person for whom the employee is taking the leave. Upon request by the District, the employee must provide the certification within fifteen (15) days. The certificate shall include:

1. the date on which the serious health condition commenced;
2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;

4. a statement the employee is needed to care for the family member and an estimate of the amount of time that such employee shall be needed or a statement that the employee is unable to perform the functions of the employee's position; and
5. the dates and duration of medical treatment if the request for intermittent leave for a planned medical treatment.

If the District doubts the validity of the certification, then at the District's expense a second opinion may be required from a health care provider selected by the District. The school physician cannot give this opinion. If the two opinions conflict, a third health care provider, at the District's expense, may be chosen by the two parties to render a final opinion.

### **Restoration**

When the employee returns from leave, the District will restore the employee to the same or an equivalent position with equivalent benefits, pay, terms and conditions of employment in accordance with Board policy.

Under certain circumstances, the District may deny restoration to a key employee. The District will comply with the notice requirements of FMLA in denying restoration. A key employee is one who is among the highest paid ten percent (10%) of the employees and whose absence would cause the District to experience a substantial and grievous economic injury.

- **Instructional Employees:** An instructional employee who begins any type of leave more than five (5) weeks before the end of an academic term, may be required to remain on leave until the end of the term, if the leave is at least three (3) weeks in duration and the return to employment would occur during the three (3) week period before the end of the term. An instructional employee who begins leave for any purpose other than personal illness five (5) weeks or less before the end of an academic term may be required to remain on leave until the end of the term, if the leave is greater than two (2) weeks and the employee would return during the last two (2) weeks of the term. An instructional employee who begins leave for any purpose other than personal illness less than three (3) weeks prior to the end of the term and the leave is longer than five (5) working days may be required to remain on leave until the end of the term.

The District reserves the right to deny restoration to an employee who is among the highest paid ten percent (10%) of the employees if specific conditions are met.

### **Failure to Return**

The District may recover from the employee the portion of the health care premiums that the employer paid during the leave in the event that the employee fails to return from the leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to circumstances beyond the control of the employee.

**Effect on Existing Laws or Agreements**

Any collective bargaining agreement which contains greater leave benefits than this policy shall remain in force. A collective bargaining agreement which does not meet the requirements of the Family and Medical Leave Act shall be modified to comply with it by the date of expiration or February 5, 1994, whichever occurs earlier.

**Notice of Policy**

The District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Issued:            June 28, 1994